

REMARKS

Claim Amendments

Claim 1 has been amended to incorporate the limitations of allowable dependent claim 5, and claim 5 has been therefore canceled.

Claims 8-14, 38-52 have been canceled.

Claim 53 has been added. Support can be found throughout the specification and drawings, *see, e.g.*, Figs. 72-73 and accompanying text.

None of these amendments introduce new matter.

Allowed Claims

Applicant notes with appreciation that claims 15-28, 33, 37 are indicated as allowed in the Action; as such, these claims are not discussed further herein.

Allowable Claim

Applicant notes with appreciation that dependent claim 5 was indicated as allowable, but objected to as being dependent on a rejected base claim. Applicant has amended corresponding independent claim 1 to incorporate the limitation(s) of claim 5, and claim 5 has been therefore canceled as redundant. As such, Applicant submits that independent claim 1, and its dependent claims 2-4, 6, are directed to patentable subject matter for the reasons indicated in the Action for now-canceled claim 5.

Claim Rejections

Claims 1-4, 6-14, 38-48, 51-53 stand rejected under §102(e) as being anticipated by U.S. Patent No. 5,562,662 (Brumfield). Claims 1 and 48-50 stand rejected under §102(e) as being anticipated by U.S. Patent No. 5,645,599 (Samani).

With regard to claims 1-4, 6, independent claim 1 has been amended to include the limitation(s) of allowable dependent claim 5, as discussed above.

Claim 7 was rejected based on a perceived ambiguity as to whether the language "a member of the interspinous process implant that was urged through the sagittal plane" referred to the implant itself or to the member. See Response to Arguments, pages 11-12. Resolving the perceived ambiguity to refer to the "implant" not the "member," the Examiner rejected claim 7 over Brumfield. Applicant has amended claim 7 to make clear that it is the member that passes through the sagittal plane. Applicant therefore submits that, consistent with the Action, claim 7 is directed to patentable subject matter.

Claims 8-14 and 38-52 have been canceled, rendering further discussion thereof moot.

New Claim 53

Independent claim 53 has been added. This claim requires, *inter alia*, "inserting an interspinous process implant laterally between adjacent spinous processes from a first lateral side." The implant comprises "a first portion and a deployable second portion that remains coupled thereto during the insertion." In addition, "during the inserting, the second portion laterally pass[es] through a sagittal plane defined by the

spinous processes." The claim also requires "deploying the implant member by changing a relative orientation between the first portion and the second portion, the second portion having passed through the sagittal plane, so that the second portion extends away from the first portion on the second lateral side of the spinous processes." Thus, like in allowable claim 5, the deployment of the implant involves positioning an implant portion that passed laterally through the sagittal plane on the second lateral side of the spinous processes. Based on the logic applied with reference to dependent claim 5, Applicant submits that claim 53 is directed to patentable subject matter.

In view of the above amendments and remarks, the Applicant submits that the present application is in condition for allowance and such action is respectfully requested.

Respectfully submitted,
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